Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1978

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No. 78-1636

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WILLIAM A. GOICHMAN, Petitioner

v.

THE DISCIPLINARY BOARD OF THE

SUPREME COURT OF PENNSYLVANIA, Respondent

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ON PETITION FOR WRIT OF CERTIORARI

TO THE SUPREME COURT OF PENNSYLVANIA

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# REPLY BRIEF BY PETITIONER

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WILLIAM A. GOICHMAN,

In Pro Per

2040 Avenue of the Stars,

Century City, Ca. 90067

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## A R G U M E N T

-I-

DISCIPLINARY COUNSEL CLAIMS THAT SERVICE WAS NOT MADE UPON THE SPECIAL PROSECUTOR AND THAT THIS WAS A DEFECT: BUT THE SPECIAL PROSECUTOR WENT OUT OF OFFICE MANY YEARS AGO AND ALTHOUGH SERVICE WAS MADE ON THE ATTORNEY WHO TRIED THE CASE (ATTY. WM. STEWART) WHEN THE MATTER WAS BEFORE THE PENNSYLVANIA SUPREME COURT, HE DECLINED TO APPEAR.

-II-

DISCIPLINARY COUNSEL CLAIMS THAT THE DUE PROCESS ARGUMENTS WERE NOT RAISED IN THE PENNSYLVANIA SUPREME COURT; THIS IS NOT SO. THEY WERE RAISED IN THE FORM OF CONTENTIONS ALTHOUGH NOT IPSSIMUS VERBIS IN ANY TALISMANIC PHRASES.

Petitioner was represented in the Pennsylvania Supreme Court by the former District Attorney of the City of Philadelphia, F. Emmett Fitzpatrick, Jr.,Esq., who has handled hundreds of cases involving the constitutional provision of speedy trial.

His speedy trial arguments in his Motion and letters to the Pennsylvania Supreme Court were framed in a sophisticated manner, clearly showing he was raising the constitutional grounds of speedy trial.

For example, in his letter of Jan. 15, 1979 (P. 6b of Resp. Record), he said: "The need for proceeding promptly with charges in criminal matters has been well recognized by your Court and I will not attempt to repeat the citations here."

It was clear from this and many other references he made, and the Court, no doubt, so understood, that he was referring to the



parameters of the speedy trial clause.

There should be no talisman connected with the use of any particular phraseology and the intendment should be toward giving each person his day in court.

-III-

PETITIONER'S RIGHT TO PRACTICE LAW IN THE COMMONWEALTH OF PENNSYLVANIA IS VERY MUCH AFFECTED BY THIS SUSPENSION.

Petitioner's suspension for income tax evasion ran from February 9, 1976, to February 9, 1978. The suspension under the case before the Court runs from February 9, 1978 to February 9, 1980, thereby making it impossible for petitioner to become reinstated until February 1980. To say Petitioner is unaffected by this suspension order is a wholly frivolous contention!

-IV-

THE CITATIONS CITED BY DISCIPLINARY COUNSEL CLAIMING THAT THE PARAMETERS OF THE SPEEDY TRIAL CLAUSE DO NOT APPLY TO ANY KIND OF UNREASONABLE DELAY IN COURT DISCIPLINARY PROCEEDINGS ARE INAPPOSITE.

Respondent cites United States v. Beebe, 431 F.2d 428 (9th Cir. 1970). That case does not give any facts and has absolutely no precedential value for this case.

In re Philip Weinstein, 254 Ore. 392, 459 P.2d 548 (1969), involved a 27 months delay by the Bar in pressing charges. No specific dates are given in the opinion. That case did not involve a delay by the Court after the matter was sub judice, as here.

The delay there was by the Bar. The Court stated: "It is unnecessary to define in this case the proper remedy for vexatious and



unreasonable delay on the part of the Bar. None has been shown in this case." The Court there also noted that Petitioner in that case had requested a delay of five years while litigation was pending in the federal courts.

In Bar Assn. of Balt. City v. Posner, 275 Md. 250, 339 A.2d 657 (1975), the judicial proceedings were commenced July 31, 1974 and the Maryland Supreme Court decided the case in June 1975 , as shown by the reports, so that there was no delay once the matter reached the courts. The delay involved, therefore, concerned only pre-filing delay. The Court said on this: "Even had this right (right of speedy trial) been available, Posner overlooks the fact that much of the delay was attributable to his own tactics."

In the case at bar, the delay complained against was all due to the Court's delay. No reason has been cited or shown for such delay and on its face, the delay was unreasonable and intolerable.

-V-

DISCIPLINARY COUNSEL CLAIMS THAT PETITIONER BY NOT DISCUSSING THE OTHER FIVE COUNTS CONCEDES THAT THERE WAS EVIDENCE SUPPORTING SAME;THIS IS NOT TRUE; THERE WAS NO SUCH EVIDENCE; PETITIONER DID NOT WANT TO BURDEN THE ORIGINAL PETITION WITH THE FULL DISCUSSION, BUT IS NOW CONSTRAINED TO DO SO.

It is interesting to note that Disciplinary Counsel has made no attempt to answer the two counts discussed in the Petition; hence, it may be inferred that Disciplinary Counsel concedes that these two charges had no evidentiary support. In this event, it does not lie in the mouth of Disciplinary Counsel to assert that the other five charges would have warranted the discipline imposed. No one knows what the Court would have imposed without these two counts.

However, the other counts were equally unsupported. A short precis follows:

Count 1. This concerned unlawful solicitation. The evidence showed that someone came to the Arnold house.



The prosecutor stipulated it was not Mr. Goichman. (Sept. 23, 1974 N.T. p. 125). The testimony showed that the man who came to the house was seen in Mr. Goichman's office carrying a briefcase. Mr. Goichman did have other lawyers working for him. There was no evidence to connect Mr. Goichman with this unidentified man.

Only two members of the family who signed the power of attorney were called to testify. The third person, Rose Colantonio. the surviving daughter, was available but not called. She could very likely have requested this "unidentified" person to come to the house.

The key witness, Raymond Arnold , was asked:

"Q. Did you ever talk with your sister to find out or did she ever tell you whether or not she had asked Mr. Goichman--

A. No, she never did.

Q. My question is did you ever talk to her?

A. No.

Q. As to whether she had asked any attorney?

A. No, I did not. I never talked to her about it.

.... (Sept. 23,1974, N.T. 113-114).

The prosecutor told the Court "I expect to be able to produce her." (Sept. 23, 1974, N.T. p. 116). He never did , nor did he ever explain why he did not.

Assuming for the sake of argument that what this unidentified man did was improper, why should Mr. Goichman be held responsible? There was no showing that Mr. Goichman urged him to do what he did or that Mr. Goichman knew what he was doing either before or after the time he did it.

This "man" visited the family at least six weeks after the father had slipped and fallen on city property. This was not an "ambulance chasing" case. From aught that appears, Mr. Goichman only was aware that there was a file in the office which had been opened up by someone else. It hardly seems likely that Mr. Goichman would have encouraged this "unidentified" man to go the Arnold house many weeks after the fall incident, sight unseen, for the purpose of being retained.

Mr. Goicham cannot and should not be held responsible for what another does unless it is shown that he



was aware of it and authorized it. Furthermore, under the tenuous facts addued, it is equally reasonable that the daughter , Rose Colantonio, had engaged the services of the "unidentified" man. In any event, proof was signally lacking.

Count VI. This charged Mr. Goichman with filing a false retainer statement in the Arnold case because he put down "friends" as the referrer of the case. If Mr. Goichman had no better knowledge than that, relating to how the case came into the office, this is all he could say. Every attorney presumes that when a client comes to the office, he does so through some "friend."

For professional misconduct to exist, there must be shown that the attorney wilfully or deliberately misrepresented something. There is no evidence that Mr. Goichman had any better information. Even the Court stated that the person responsible for the case was an "unidentified man."

There was no evidence that Mr. Goichman knew the name or address of any specific person. Many referrals are made to an attorney without the

attorney knowing who it was. The use of the term "friends" would be in the same category as "unidentified."The prosecution did not meet its burden on this charge.

Count V. Mr. Goichman was charged with submitting a false medical bill for Doris Lindsay. The key question was whether Mr. Goichman knew that she had gone to the doctor only twice instead of the 17 times put down by the doctor.

The prosecutor asked here: (Sept. 24,1974 N.T. p. 154):

"Q. Before your case was settled, Mrs. Lindsay, did Mr. Goichman ever sit down with you and ask you how many times this doctor had treated you, and what your injuries were, and so on and so forth?

A. No, he didn't ask me how many times he treated me."

The record contains repeated denials by this witness of discussing this matter with Mr. Goichman. For example, Sept. 24, 1974, N.T. p. 160,



the witness was asked again:

"Q. And did you discuss with him at that time that you had only been to --

A. No, I didn't say anything about I only seen the doctor two times. I didn't go over that with him."

The witness was again asked: (Sept. 24, 1974, NT, p. 162);

"Q. Why didn't you tell him that you had only been twice?

A. He didn't ask me that.

Q. And you didn't offer to tell him?

A. No, he didn't ask me that.

Q. And you realized, didn't you, Mrs. Lindsay, that by not telling him that you had only been there twice, you were thereby confirming his direction to you to testify seventeen times, which was false, correct?

A. Yes, I said that."

The Disciplinary Court held that Mr. Goichman knew and participated in submitting a fraudulent medical

bill, but the Court nowhere mentions any evidence entitling it to make this kind of finding!

Count IV. This count concerns the same charge for Mrs. Lindsay's son, Roger. Similar testimony exonerating Mr. Goichman from knowing how many times the party actually went is contained in the record. For example, Sept. 24, 1974, NT., page 76, the son was asked:

"Q. At any time before your case was settled, did Mr. Goichman ever ask you how many times you had been to Dr. Kramer's office?

A. No."

He was asked repeatedly and said the same thing. At p. 84, Sept. 24, 1974, N.T.:

"Q. Did you ever review it with Mr. Goichman either at one of these hearings or at the time of the settlement how many times you had been to see Dr. Kramer?

"A. No, not that I can recall."

On p. 86, Sept. 24, 1974 NT, the following:

"Q. Isn't true that you didn't tell him how many times you had really been to the doctor?

A. I can't remember."



Then , again, the prosecutor asked, Sept. 24, 1974 NT, p. 104:

"Q. Yes. The question was, did you ever discuss with him how many times you had been treated by Dr. Cramer?

A. Not that I can remember.

Q. All right.

JUDGE KLEIN: Please let me get this clear. This witness' answer now is that he cannot remember whether he discussed with Mr. Goichman the number of times that he visited Dr. Cramer."

The prosecutor was uneasy with the state of the record and beginning on page 105, Sept. 24, 1974 . N.T., began a searching cross-examination of his own witness. To excerpt a part:

"Q. Did he ever make a simple inquiry of you, irrespective of what his doctor's bill showed; did he ever simply ask you how many times, Roger Lindsay, did you see Dr. Cramer for treatment on this case?

MR. ROSE: Let the record reflect a pause.

A. He could have. Like I said, I can't remember.

BY JUDGE KLEIN

Q. You are answering now that you don't remember?

A. He could have.

Q. What is your answer now; you don't remember?

A. I have no recollection; I can't remember. He could have; I don't know. I can't remember.

By Mr. Stewart: (The Prosecutor)

Q. You don't recall whether he did or not?

A. I can't recall."

The prosecutor, the Judge, the defense counsel, all recognized how vital this evidence was to the case and kept going over it. In spite of the failure to adduce this vital link, the Disciplinary Court still found that Mr. Goichman know of and participated in the fraudulent medical claim.

All Mr. Goichman kew was what the medical bill showed. It was this bill which he reviewed with the client. The client never informed Mr. Goichman otherwise.

It is significant that the prosecutor never called the doctor to the stand. It is not difficult when an attorney has a large clientele to find some disgruntled clients.



The Disciplinary Counsel in its brief (p. 24) states that Petitioner directed them to testify falsely in depositions. But the fact is that there was no evidence that Mr. Goichman when reviewing their case knew that the bill was false. The Lindsays, as their testimony, reveals, never told him.

This is another case where the Disciplinary Court reached unwarranted conclusions unsupported by the record.

Count VII. This count concerned the unauthorized prosecution of a claim for personal injuries. One Bobbie Coston was a driver and one Barbara Penn was a passenger.

The evidence indicated that an attorney named Laurence Ring, Esq. working in Mr. Goichman's office had sent a letter claiming he represented Barbara Penn (Sept. 24, 1974 NT. p. 120). Mr. Ring or someone other than Mr. Goichman had also talked to Barbara Penn on the telephone. (Sept. 25, 1974, p. 7). Mr. Ring had sent a letter to the insurance company dated June 16, 1969. (Sept. 24, 1974, NT. p. 120).

Mr. Ring had also sent a letter to Barbara Penn in which he said, "pursuant to our recent telephone conversation, etc." Sept. 23, 1974, NT. p. 59. The insurance company adjuster spoke to Mr. Ring on July 25, 1969. Sept. 24, 1974, p. 123. At that time Mr. Ring said he would try to obtain the medical reports. The insurance company addressed a letter to Mr. Ring , dated September 10, 1969. Sept. 24, 1974, NT p. 123.

Incidentally, all this evidence comes from the prosecutor's case. Mr. Goichman presented no evidence on any count since he did not believe that any case was established.

It was not until Sept. 18, 1969, that the insurance company learned that Mr. Goichman was taking over the case. Sept. 24, 1974, NT. p. 123.

The insurance company made a memorandum dated September 19, 1969, which stated that after discussions with both Mr. Ring and Mr. Goichman neither had any medical information on theclient. A memorandum dated October 15, 1969, by the insurance company, revealed



that Mr. Goichman admitted again he knew nothing about the medical treatment. On March 23, 1971, in anticipation of the S/L, Mr. Goichman filed a summons.

The insurance company by memorandum dated April 5, 1971, noted that "attorney showed little or no interest in the case." Sept. 24, 1974, N.T., p. 142.

The insurance company had closed its file previously and when it received the summons was interested in making a nominal settlement to avoid counsel fees. The insurance company offered Mr. Goichman $350 to settle the matter.

The insurance company also indicated that it had been told previously that a Dr. Hockstein had treated Barbara Penn, although no bill was ever presented. The insurance adjuster did not record to whom he spoke in getting this information. Sept. 24, 1969, N.T. p. 139.

The release for $350 was sent out to Barbara Penn and she admits signing it, Sept. 24, 1974, N.T. pp. 30, 33, but claims she was pressured into it. Sept. 24,

1974, N.T. pp.34-35.

In April 1971, Mr. Goichman received the settlement draft and contacted Mrs. Penn about distribution. They had a nasty argument and the settlement draft was not signed.

Mrs. Penn was asked: (Sept. 23, 1974, N.T., p. 74)

"Q. You testified at direct examination that you signed that release because you were upset and that you had been the victim of pressure from the respondent in the case, Mr. Goichman; is that correct?

A. That's right.

Q. You also realized you had not been to a doctor and if you released any claim you would be releasing a fraudulent claim. Isn't that true?

A. That's true."

Mrs. Penn shortly thereafter contacted the insurance company and informed it that she had no claim against it and it in turn stopped payment on the draft. The original draft was issued in April, 1971, and the insurance company stopped payment on August 4, 1971. Sept. 23, 1974 , N.T. p. 133. The



draft was never cashed. It was returned to the insurance company August 30, 1972 and no new draft was ever issued. Sept. 23, 1974, N.T., p. 135. In August 1972, the settlement draft was a "dead" piece of paper, having been terminated in August 1971.

The gist of the case boils down to a bit of confusion and misunderstanding. Those in Mr. Goichman's office who had dealt with the file believed that Barbara Penn was also making claim. Even if she never intended to make a claim, the fact that she willingly signed the release would have been a ratification. Tempers were responsible for the failure to consummate the settlement, rather than anything else.

The evidence shows that the persons in touch with Mrs. Penn and the insurance company during the first five months were assistants working for Mr. Goichman, and not Mr. Goichman himself.

When Mr. Goichman took over the file, it reasonably

seemed to him that the office was representing Mrs. Penn. There was no evidence as to who told the insurance company that Barbara Penn had had medical treatment and how much her bill was. In fact, no bill was ever submitted.

The insurance company confirmed the fact that when it spoke to Mr. Goichman he denied having any knowledge of her medical treatment.

Mr. Ring was not called as a witness, nor was anyone else from Mr. Goichman's office.

The most that can be said is that Mr. Goichman was confused by the file. The evidence rather convincingly demonstrates that Mrs. Penn had a passing interest in some claim. Even if Mr. Ring's letter of representation was without authorization, Mr. Goichman was not responsible for that. Furthermore , the fact that Mrs. Penn signed the Release would serve to ratify the representation post hac.

There was no evidence that Mr. Goichman had



submitted any medical bills or given any medical information.

The charges, therefore, that Mr. Goichman was guilty of prosecuting an unauthorized claim, and of submitting a fraudulent medical claim, like the other charges, were not proven or supported by the evidence.

Findings of a court seem to have an independent existence apart from the record or evidence which supports them. While the Disciplinary Court sustained all of the counts and the Pennsylvania Supreme Court, affirmed and approved, without opinion, all of the counts, the truth and fact remains that none was proven and there was , upon inspection, a very great dearth of proof.

## C O N C L U S I O N

The cavalier manner in which the evidence was treated and the seriousness of the charges demonstrate the radical unfairness of the conviction. Justice cries for redress!

The unseemly and gross delay by the Court (not by the Bar or staff) cries out for correction, whether it be on "shocking the conscience" or on the ground of the parameters of the speedy trial clause.

Petitioner prays that this Court will not stand by and allow this miscarriage of justice to go uncorrected.

RESPECTFULLY SUBMITTED,

WILLIAM A. GOICHMAN
In Pro Per., Petitioner